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Patrick Byrne

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

ROBERT HUNTER BIDEN, an
individual,

Plaintiff,

vs.

PATRICK M. BYRNE, an individual,

Defendant.

Case No.: 2:23-cv-09430-SVW-PD
Judge: Honorable Stephen V. Wilson
Courtroom: "10A"

Complaint Filed: November 8, 2023

**DEFENDANT'S REPLY IN
SUPPORT OF HIS MOTION IN
LIMINE NO. 2 TO EXCLUDE ANY
TESTIMONY OR EVIDENCE OF
PLAINTIFF'S ALLEGED SEVERE
EMOTIONAL DISTRESS
DAMAGES**

Date: November 25, 2024
Time: 3:00 p.m.
Courtroom: "10A"

1.

**DEFENDANT'S REPLY IN SUPPORT OF HIS MOTION IN LIMINE NO. 2 TO EXCLUDE ANY TESTIMONY OR
EVIDENCE OF PLAINTIFF'S ALLEGED EMOTIONAL DISTRESS DAMAGES**

TO ALL PARTIES AND THEIR ATTORNEY'S OF RECORD:

Defendant Patrick Byrne hereby replies in support of his motion in limine to exclude testimony and evidence of plaintiff's severe emotional distress.

MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

Plaintiff has no evidence, documentation, or medical record corroborating his alleged emotional distress damages. He failed to identify a single corroborating document or medical record supporting his claim in his exhibit list. It bears repeating that during his deposition, Plaintiff could not say with any semblance of certainty that Dr. Berlin saw him for any emotional distress as it relates to this case. Yet, he wishes to testify at trial that she did, and that he saw her for such treatment. He further wishes to have Dr. Berlin and Ms. Biden-Cohen testify about his alleged emotional distress damages. Defendant's properly-designated neuropsychological expert, Dr. Nathan E. Lavid, MD, examined Plaintiff, and found Plaintiff suffered absolutely no severe or pathologic emotional distress or emotional distress damages.

Plaintiff has no corroborating evidence to rebut Defendant's expert, other than his trial testimony which will contradict his deposition testimony.

II. LEGAL ARGUMENT

A. Defendant's Motion is Proper

Defendant's motion is a proper motion in limine designed to preclude inadmissible testimony by lay witnesses and undisclosed experts. *United States v. Heller* 551 F.3d 1108, 1111 (9th Cir. 2009). The testimony of Dr. Berlin and Ms. Biden-Cohen will result in objections at trial, and the Court has the power to grant this motion now to avoid litigating the issue at trial. *Luce v. U.S.*, 469 U.S. 38, 41; *U.S. v. Caputo*, 3113 F.Supp.2d 764, 767-768 (N.D. Ill. 2004).

Plaintiff has no admissible corroborating evidence of his alleged emotional distress damages, rendering them speculative and irrelevant under the Federal

1 Rules of Evidence 401(b) and 403, and therefore the Court has the power to
2 determine the admissibility of his alleged emotional distress damages under the
3 Federal Rules of Evidence 103(d) and 104(c). *Williams v. Board of Regents of*
4 *Univ. Sys. of Georgia*, 629 F.2d 993, 999-1001 (5th Cir. 1980).

5 Plaintiff cannot satisfy his burden to prove his emotional distress damages
6 by a preponderance of the evidence. Ninth Circuit Jury Instruction § 5.1. Any
7 attempt to put on evidence of these alleged damages will waste time.

8 Finally, Plaintiff's witnesses cannot testify to causation of his alleged
9 emotional distress damages and injuries. Such testimony is strictly within the
10 purview of an expert under the Federal Rules of Evidence 702. (See Federal Rule
11 of Evidence 701(c); *Tribble v Evangelides* 670 F.3d 753, 758 (7th Cir. 2012);
12 *Williams v Mast Biosurgery USA, Inc.*, 644 F.3d 1312, 1317-1318 (11th Cir.
13 2011); *Certain Underwriters at Lloyd's, London v Sinkovich* 232 F.3d 200, 204-
14 205 (4th Cir. 2000).) Here, whether Defendant's alleged statements caused
15 Plaintiff's alleged emotional distress is a matter of expert opinion based on
16 specialized knowledge. Plaintiff chose to forego designating an expert witness to
17 offer opinion testimony that Defendant's alleged statements caused Plaintiff's
18 emotional distress. Therefore, Plaintiff has no admissible evidence to establish
19 this item of damages, and therefore all testimony or evidence of emotional
20 distress damages must be excluded.

21 **B. Plaintiff Refused to Meet and Confer**

22 Plaintiff's own Exhibit A clearly shows he refused to further discuss
23 Defendant's Motions in Limine, simply stating he categorically refused to stipulate
24 to any of the motions we proposed.

25 **III. CONCLUSION**

26 Based on the foregoing, Defendant respectfully requests that this Court grant
27 this Motion.
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1 Dated: November 18, 2024 LAW OFFICES OF MICHAEL C. MURPHY

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3 By: /s/ Michael C. Murphy, Esq.

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5 _____
6 Michael C. Murphy, Esq.
7 Michael C. Murphy, Jr., Esq.
8 Attorneys for Defendant, Patrick
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